



(4337-15)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 41

[156A2100DD/AAKC001030 /A0A501010.999900 253G] [Docket ID: BIA-2011-0002]

RIN 1076-AF08

Grants to Tribally Controlled Colleges and Universities and Diné College

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended (TCCUA), authorizes Federal assistance to institutions of higher education that are formally controlled or have been formally sanctioned or chartered by the governing body of an Indian tribe or tribes. Passed at the same time as the TCCUA, the Navajo Community College Assistance Act of 1978, as amended (NCCA) authorizes Federal assistance to the Navajo Nation in construction, maintenance, and operation of Diné College. This proposed rule would update the TCCUA's implementing regulations in light of amendments to the TCCUA in 1983, 1986, 1998 and 2008 and the NCCA's implementing regulations in light of amendments to the NCCA in 2008.

DATE: Please submit written comments by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. See Section IV of SUPPLEMENTARY INFORMATION for information on tribal consultation sessions.

ADDRESSES: You may submit comments by any of the following methods:

- Federal rulemaking portal: <http://www.regulations.gov>. The rule is listed under the agency name “Bureau of Indian Affairs.” The rule has been assigned Docket ID: BIA-2011-0002. If you would like to submit comments through the Federal e-Rulemaking Portal, go to www.regulations.gov and follow the instructions.

- E-mail: Ms. Juanita.Mendoza@bie.edu. Include the number 1076-AF08 in the subject line of the message.

- Fax: (202) 208-3312. Include the number 1076-AF08 in the subject line of the message.

- Mail or hand delivery: Ms. Juanita Mendoza, Acting Chief of Staff, Bureau of Indian Education, 1849 C Street, NW, MIB - Mail Stop 4657, Washington, DC 20240. Include the number 1076-AF08 in the subject line of the message.

We cannot ensure that comments received after the close of the comment period (see DATES) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

See Section IV of SUPPLEMENTARY INFORMATION for information on tribal consultation sessions.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Mendoza, Acting Chief of Staff, Bureau of Indian Education (202) 208-3559.

SUPPLEMENTARY INFORMATION:

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I. Background

The TCCUA authorizes grants for operating and improving tribally controlled colleges and universities to insure [sic] continued and expanded educational opportunities for Indian students and to allow for the improvement and expansion of the physical resources of such institutions. *See*, 25 U.S.C. 1801 *et seq.* The TCCUA also authorizes grants for the encouragement of endowment funds for the operation and improvement of tribally controlled colleges and universities. The NCCA authorizes grants to the Navajo Nation to assist in the construction, maintenance, and operation of Diné College. *See* 25 U.S.C. 640a *et seq.*

In 1968, the Navajo Nation created the first tribally controlled college, now called Diné College—and other tribal colleges quickly followed in California, North Dakota, and South Dakota. Today, there are 37tribally controlled colleges in 17 states. The tribally controlled institutions were chartered by one or more tribes and are locally managed.

Tribally controlled colleges generally serve geographically isolated populations. In a relatively brief period of time, they have become essential to educational opportunity for American Indian students. Tribally controlled colleges are unique institutions that combine personal attention with cultural relevance, in such a way as to encourage American Indians—especially those living on reservations—to overcome barriers to higher education.

II. Purpose of the Proposed Rule

The regulations at 25 CFR part 41 were originally published in 1979. See, 44 FR 67042 dated November 21, 1979. Since the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95-471, Title I) was enacted on October 17, 1978, over 30 years of amendments to the Act have been made. These include Pub. L. 98-192 (December 1, 1983), Pub. L. 99-428 (September 30, 1996), Pub. L. 105-244 (October 7, 1998), and Pub. L. 110-315 (August 14, 2008). Similarly, the Navajo Community College Assistance Act of 1978 (Pub. L. 95-471, Title II) was amended by Pub. L. 110-315 (August 14, 2008). The revisions to the TCCUA and the NCCA have rendered areas of the current rule obsolete. Therefore, the proposed rule updates the regulations and:

- Makes changes required by Executive Order 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write in plain language;
- Updates institutional names (e.g., changing “Director, Office of Indian Education Programs” to “Director of the Bureau of Indian Education”);
- Adds statutory authorities and makes accompanying statutory updates ; and
- Combines the purpose, scope, and definitions into a new subpart A.

III. Summary of the Proposed Rule

Significant changes include emphasizing that the calculation of an Indian Student Count (ISC) shall only include students making satisfactory progress, as defined by the tribally controlled college, towards a degree or certificate; no credit hours earned by a high school student that will be used towards the student’s high school degree or its equivalent shall be included in the ISC; and grantees may exclude high school students for the purpose of calculating the total number of full-time equivalent students. Changes clarify often misunderstood requirements for an ISC and when high school students cannot be counted towards an ISC. The proposed rule updates definitions per amended legislation; reorganizes and clarifies institutional grant eligibility, grant application procedures, the Department of the Interior (DOI) grant reporting requirements, and essential information for determining Indian student eligibility. Presently, information is embedded in extended definitions and is difficult to find, the proposed changes increase accessibility and correct out of date language and requirements.

The proposed rule makes several terminology changes throughout to reflect statutory language. These include replacing “tribally controlled community colleges” with “tribally controlled colleges and universities,” replacing “Navajo Community College” with “Diné College,” and replacing “feasibility” with “eligibility” in appropriate places. The following table lists additional changes.

Current Section	Current Title	Proposed Section	Proposed Title	Change
41.1	Purpose.	41.1	When does this subpart apply?	Removes purpose and replaces a reference to provisions in subpart A applying to subparts B and C.
41.2	Scope	41.9	What is the purpose of this subpart?	<ul style="list-style-type: none"> • Removes “Scope.” • Clarifies that subpart A applies to financial assistance to tribal colleges and universities specified by Title I of the Act and technical assistance to all

				institutions funded under the Act <ul style="list-style-type: none"> • Clarifies that subpart A does not apply to financial assistance to Diné College or tribally controlled postsecondary career and technical institutions
41.3	Definitions	41.3	What definitions are needed?	<ul style="list-style-type: none"> • Adds definition for “Academic facilities” • Removes definition for “The Act” • Adds “BIE” to mean the Bureau of Indian Education • Adds “Department” to mean the Department of the Interior • Adds “Director” • Adds “Eligible continuing education units (CEUs)” • Adds definition for “Full-time” • Adds “Indian Student Count (ISC) or Indian Full-Time Equivalent (FTE)” and moves information on the formula to 41.5 • Changes “Indian” to “Indian student” definition • Amends definition of “Institution of higher education” to clarify that unaccredited institutions must have been granted pre-accreditation or candidate status and references 20 U.S.C. 100(a) • Amends “national Indian organization” to delete requirement for finding to be published in the Federal Register • Adds definition for “NCCA” • Amends “operating expenses of education programs” to add more examples of operating expenses • Adds “Satisfactory progress” and defines it as what the tribal college or university defines it to be • Adds definition for “Secretary” • Adds definition for “TCCUA” to mean the Tribally Controlled Colleges and Universities Assistance Act of 1978 • Removed “unused portion of received funds”
41.4	Grants	41.11	Who is	Defines tribal college or university

			eligible for financial assistance under this subpart	eligibility for receiving financial assistance.
41.5	Eligible Activities	41.5	How is Indian Student Count/Full Time Equivalent calculated?	<ul style="list-style-type: none"> • Refines formula for clarity and changes the week to conduct an ISC to the 3rd week of an academic term as opposed to the 6th week of an academic term. • Adds credit hours toward computation of ISC by students who have not obtained a high school degree benefiting from education or training offered but exempts credit hours from ISC computation if they are applied towards the high school degree. • Adds toward a degree or certificate.
41.6	HHS Participation	Removes Section		Deletes section because the process is no longer relevant and moves the essence of the section to Sec. 41.17.
41.7	Feasibility Studies	41.19	How can a tribal college or university establish eligibility to receive a grant?	
41.7	Feasibility Studies	41.21	How can a tribe appeal the results of an eligibility study?	<ul style="list-style-type: none"> • Extends the amount of time the tribe may submit an appeal to the Assistant Secretary from 30 days to 45 days. • Changes Assistant Secretary's written ruling on an appeal from 30 days to 45 days.
41.7	Feasibility Studies (f)	41.23	Can a tribal college or university request a second eligibility study?	Clarifies that a college or university can request another eligibility study in 12 months from the date of the negative determination.

41.8(a)-(b)	Grants	41.25 & 41.5	How does a tribal college or university apply for a grant?	<ul style="list-style-type: none"> • Simplifies the formula for calculating the amount of a grant. • Changes submission deadline from January 31 to June 1st • Outlines required information and provides an explanation for the required information. • Adds grantees may exclude high school students from the total number of FTE students. • Adds information that a grantee does not need to submit new required information if there has been no change in the information from the previous year.
41.8(c)	Grants	41.27	When can the tribal college or university expect a decision on its application	Changes the approval and disapproval time frame from 30 days to 45 days.
41.8(d)	-	41.29	How will a grant be awarded?	Adds that the base amount is \$8,000 (from \$4,000) and that it will be adjusted annually for inflation.
41.8(e)	--	41.31 & 41.33	When will the tribal college or university receive funding?	<ul style="list-style-type: none"> • Adds that payments equal to 95 percent (from 50 percent) of funds available will be distributed by either July 1 (from October 1) or within 14 days of appropriations. • Adds BIE will not commingle funds appropriated for grants.
41.8 (g)	--	41.33	What if there isn't enough money to pay the full amount	No change in information.
41.8(f)	--	41.35	What will happen if the tribal college or university doesn't receive its appropriate share?	No change in information.

41.8(h)	--	41.37	Is the tribal college or university eligible for other grants?	Adds clarification.
41.9	Reports	41.39	What reports does the tribal college or university need to provide?	No change in information.
41.10	Technical Assistance	41.41	Can the tribal college or university receive technical assistance	Adds that BIE will provide technical assistance.
41.11	General Provisions	41.43	How must the tribal college or university administer its grant?	No change in information.
41.12	Annual Budget	Removes Section		Deletes section because section is no longer applicable; appropriations are now sent directly to Bureau of Indian Education.
41.13		For what activities can financial assistance to tribal colleges and universities be used?		Provides examples of permissible activities.
41.13	Criminal penalties	41.7	What happens if false information is submitted?	No change in information.
41.15		What activities are prohibited?		Lists prohibited activities.
41.17		What is the role of the Secretary of Education?		Clarifies role.
41.20	Policy	Removes Section		Deletes section because subpart A now sets out the policy,
41.21	Scope	41.51	What is the scope of this subpart?	Simplifies applicability statement.
41.22	Definitions	Removes		Deletes section because definitions are

		Section		now consolidated in subpart A.
41.23	Eligible activities	41.63	How can financial assistance be used?	No change in information.
41.24(a)-(b)	Grants	41.53	How does Diné College request financial assistance?	Simplifies requirements.
41.24(c)	--	41.55	How are grant funds processed?	Clarifies funds will not be commingled with those designated for other titles of the TCCUA.
41.24(d)	--	41.57	When will the application be reviewed?	Changes time in which grant award will be made from 30 days to 45 days.
41.24(e)	--	41.29.	How will a grant be awarded?	Refers to subpart B.
41.24(f)	--	41.59	When will grant funds be paid?	Simplifies when funds will be received.
41.24(g)	--	Refers to section § 41.35.	--	
41.24(h)	--	41.61	Is Diné College eligible for other grants?	No change in information.
41.25	Reports	41.65	What reports must be provided?	Changes reporting deadline from September 1st to December 1st.
41.26	Technical assistance	41.67	Can Diné College receive technical assistance?	Refers back to procedures in subpart B.
41.27(a)-(b)	General provisions	41.69	How shall Diné College administer its grant?	No change in information.
41.27(c)	Appeal	41.70		Changes time in which an appeal, a hearing and the Assistant Secretary's ruling will be made from 30 days to 45 days.

41.28	Criminal penalties	41.7	What happens if false information is submitted?	Deletes section because its included in subpart A.
41.45		How does the tribal college or university apply for programming grants?		Adds tribes and tribal entities may submit a request for a grant to conduct planning activities for the establishment of a tribally controlled college or university.
41.47		What is the purpose of this subpart?		Specifies Diné College and the Diné College Act.

IV. Tribal Consultation Sessions

BIE will be hosting two tribal consultation sessions by webex and teleconference on this proposed rule:

- Monday, September 21, 2015, 3 p.m. EDT. To register for this session, go to this link: <https://dcma100.webex.com/dcma100/k2/j.php?MTID=t23a171402a9f5518f3b863039378065a>. Once the host approves your registration, you will receive a confirmation email with instructions for joining the session. To join by teleconference, please call: 1-866-704-9181, Passcode: 10469100.
- Wednesday, September 23, 2015, 3 p.m. EDT. To register for this session go to this link: <https://dcma100.webex.com/dcma100/k2/j.php?MTID=tdf898f2b05e77536907260a8a358a52c>. Once you are approved by the host, you will receive a confirmation email with instructions for joining the session. To join by teleconference, please call: 1-866-704-9181, Passcode: 10469100.

V. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It does not change current funding requirements or regulate small entities.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. Because this proposed rule is limited to the tribally controlled colleges or universities within tribal communities, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor

will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable “taking”. A takings implication assessment is not required.

F. Federalism (E.O.) 13132

Under the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule implements provisions within the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95-471 enacted on October 17, 1978) that authorizes grants for operating and improving tribally controlled colleges or universities to ensure continued and expanded educational opportunities for Indian students by providing financial assistance to be used for the operating expenses of education programs.

Because the rule does not affect the Federal government's relationship to the States or the balance of power and responsibilities among various levels of government, it will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175)

This rule will directly affect all those tribes planning to apply for or now receiving grants under the TCCUA and the NCCA. In accordance with Executive Order 13175 (59 FR 22951, November 6, 2000), the Bureau of Indian Education conducted consultation on the following dates in 2014: October 16, Anchorage, Alaska; October 20, Webinar; October 22, Gallup, New Mexico; October 27, Billings, Montana; and October 29, Bloomington, Minnesota. To develop the proposed rule, the Department collaborated with the American Indian Higher Education Consortium (AIHEC), which represents tribally controlled colleges and universities that will be affected by the rule. Presidents of tribally-controlled colleges and universities provided the initial comments and draft of the rule. AIHEC formally presented the draft for the proposed rule to the BIE via drafting sessions. The current proposed rule is the result of those drafting sessions, BIE input and recommendations, and comments provided at the consultations.

I. Paperwork Reduction Act

This rule contains the following information collections, which are currently approved by OMB: Tribal Colleges and University Grant Application Form, which is approved under OMB Control Number 1076-0018; and Tribal Colleges and University Annual Report Form, which is

approved under OMB Control Number 1076-0105. Both of these information collections expire on November 30, 2015. The proposed rule does not add any new information collection burden beyond that covered by these existing OMB approvals; therefore, an information collection submission to OMB is not required for this rulemaking.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

K. Information Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106-554).

L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

M. Clarity of this Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the

methods listed in the "COMMENTS" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

N. Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects

Colleges or universities, Grants programs – education, Grant programs – Indians, Indians – education, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Department of the Interior proposes to amend title 25 of the Code of Federal Regulations by revising part 41 to read as follows:

PART 41—GRANTS TO TRIBALLY CONTROLLED COLLEGES AND UNIVERSITIES, DINÉ COLLEGE, AND TRIBALLY CONTROLLED POSTSECONDARY CAREER AND TECHNICAL INSTITUTIONS

Subpart A—Purpose, Scope, Definitions

Sec.

- | | |
|------|---|
| 41.1 | When does this subpart apply? |
| 41.3 | What definitions are needed? |
| 41.5 | How is ISC/FTE calculated? |
| 41.7 | What happens if false information is submitted? |

Subpart B—Tribally Controlled Colleges and Universities

- 41.9 What is the purpose of this subpart?
- 41.11 Who is eligible for financial assistance under this subpart?
- 41.13 For what activities can financial assistance to tribal colleges and universities be used?
- 41.15 What activities are prohibited?
- 41.17 What is the role of the Secretary of Education?
- 41.19 How can a tribal college or university establish eligibility to receive a grant?
- 41.21 How can a tribe appeal the results of an eligibility study?
- 41.23 Can a tribal college or university request a second eligibility study?
- 41.25 How does the tribal college or university apply for a grant?
- 41.27 When can the tribal college or university expect a decision on its application?
- 41.29 How will a grant be awarded?
- 41.31 When will the tribal college or university receive funding?
- 41.33 What if there isn't enough money to pay the full grant amount?
- 41.35 What will happen if the tribal college or university doesn't receive its appropriate share?
- 41.37 Is the tribal college or university eligible for other grants?
- 41.39 What reports does the tribal college or university need to provide?
- 41.41 Can the tribal college or university receive technical assistance?
- 41.43 How must the tribal college or university administer its grant?
- 41.45 How does the tribal college or university apply for programming grants?
- 41.47 Are tribal colleges or universities eligible for endowments?

Subpart C—Diné College

- 41.49 What is the purpose of this subpart?
- 41.51 What is the scope of this subpart?
- 41.53 How does Diné College request financial assistance?
- 41.55 How are grant funds processed?
- 41.57 When will the application be reviewed?
- 41.59 When will the funds be paid?
- 41.61 Is Diné College eligible to receive other grants?
- 41.63 How can financial assistance be used?
- 41.65 What reports must be provided?
- 41.67 Can Diné College receive technical assistance?
- 41.69 How shall Diné College administer its grant?
- 41.71 Can Diné College appeal an adverse decision under a grant agreement by the Director?

AUTHORITY: Pub. L. 95-471, Oct. 17, 1978, 92 Stat. 1325; amended Pub. L. 98-192, Dec. 1, 1983, 97 Stat. 1335; Pub. L. 99-428, Sept. 30, 1986, 100 Stat. 982; Pub. L. 105-244, Oct. 7, 1998, 112 Stat. 1619; Pub. L. 110-315, Aug. 14, 2008, 122 Stat. 3460; 25 U.S.C. 1801 *et seq.*; Pub. L. 98-192, Dec. 15, 1971, 85 Stat. 646; and Pub. L. 110-315, Aug. 14, 2008, 122 Stat. 3468; 25 U.S.C. 640a *et seq.*

Subpart A— Applicability and Definitions

§ 41.1 When does this subpart apply?

The provisions in this subpart A apply to subparts B and C.

§ 41.3 What definitions are needed?

As used in this part:

Academic facilities mean structures suitable for use as:

- (1) Classrooms, laboratories, libraries, and related facilities necessary or appropriate for instruction of students;
- (2) Research facilities;
- (3) Facilities for administration of educational or research programs;
- (4) Dormitories or student services buildings; or
- (5) Maintenance, storage, support, or utility facilities essential to the operation of the foregoing facilities.

Academic term means a semester, trimester, or other such period (not less than six weeks in duration) into which a tribal college or university normally subdivides its academic year, but does not include a summer term.

Academic year means a twelve month period established by a tribal college or university as the annual period for the operation of the tribal college's or university's education programs.

Assistant Secretary means the Assistant Secretary – Indian Affairs of the Department of the Interior.

BIE means the Bureau of Indian Education.

College or university means an institution of higher education that is formally controlled, formally sanctioned, or chartered by the governing body of an Indian tribe or tribes. To qualify under this definition, the college or university must:

(1) Be the only institution recognized by the Department for the tribe, excluding Diné College; and

(2) If under the control, sanction, or charter of more than one tribe, be the only institution recognized by the Department for at least one tribe that currently has no other formally controlled, formally sanctioned, or chartered college or university.

Department means the Department of the Interior.

Director means the Director of the Bureau of Indian Education.

Eligible continuing education units (CEUs) means non-degree credits that meet the criteria established by the International Association of Continuing Education and Training.

Full-time means registered for 12 or more credit hours for an academic term.

Indian Student Count (ISC) or Indian Full-Time Equivalent (FTE) means a number equal to the total number of Indian students enrolled at a tribal college or university, determined according to the formula in Section § 41.5.

Indian student means a student who is a member of an Indian tribe, or (2) a biological child of a living or deceased member of an Indian tribe. Documentation is required to verify eligibility as a biological child of a living or deceased member of an Indian tribe, and may include birth certificate and marriage license; tribal records of student's parent; Indian Health Service eligibility cards; other documentation necessary to authenticate a student as eligible to be counted as an *Indian student* under this definition.

Indian tribe means an Indian tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, to be listed in the

Federal Register pursuant to 25 CFR 83.5(a) as recognized by and eligible to receive services from the Bureau of Indian Affairs.

Institution of higher education means an institution as defined by section 1001(a) of Title 20 of the United States Code, except that clause (2) of such section shall not be applicable and the reference to Secretary in clause (5)(A) of such section shall be deemed to refer to the Secretary of the Interior.

National Indian organization means an organization which the Secretary finds to be nationally based, represents a substantial Indian constituency and has expertise in the fields of tribally controlled colleges and universities, and Indian higher education.

NCCA means the Navajo Community College Act of 1978, as amended (25 U.S.C. 640a *et seq.*).

Operating expenses of education programs means the obligations and expenditures of a tribal college or university for postsecondary except for acquisition or construction of academic facilities. Permissible expenditures may include:

- (1) Administration;
- (2) Instruction;
- (3) Maintenance and repair of facilities;
- (4) Acquisition and upgrade of equipment, technological equipment, and other physical resources.

Part-time means registered for less than 12 credit hours for an academic term.

Satisfactory progress means satisfactory progress toward a degree or certificate as defined by the tribal college or university.

Secretary, unless otherwise designated, means the Secretary of the Interior, or his/her duly authorized representative.

TCCUA means the Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended (25 U.S.C. 1801 *et seq.*).

§ 41.5 How is ISC/FTE calculated?

(a) ISC is calculated on the basis of eligible registrations of Indian students as in effect at the conclusion of the third week of each academic term.

(b) To calculate ISC for an academic term, begin by adding all credit hours of full-time students and all credit hours of part-time students who are registered at the conclusion of the third week of the academic term.

(c) Credit hours earned by students who have not obtained a high school degree or its equivalent may be added if you have established criteria for the admission of such students on the basis of their ability to benefit from the education or training offered. You will be presumed to have established such criteria if your admission procedures include counseling or testing that measures students' aptitude to successfully complete the courses in which they enroll.

(d) No credit hours earned by a student attending high school and applied towards the student's high school degree or its equivalent may be counted toward computation of ISC; and no credit hours earned by a student not making satisfactory progress toward a degree or certificate may count toward the ISC.

(e) If ISC is being calculated for a fall term, add to the calculation in paragraph (b) of this section any credits earned in classes offered during the preceding summer term.

(f) Add to the calculation in paragraph (d) of this section those credits being earned in an eligible continuing education program at the conclusion of the third week of the academic term.

Determine the number of those credits as follows:

- (1) For institutions on a semester system: one credit for every 15 contact hours and
 - (2) For institutions on a quarter system: one credit for every 10 contact hours
- of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as described in the criteria established by the International Association for Continuing Education and Training. Limit the number of calculated eligible continuing education credits to 10 percent of your ISC.

(g) Divide by 12 the calculation in paragraph (e) of this section.

The formula for the full calculation is expressed mathematically as:

$$\text{ISC} = \text{FTCR} + \text{PTCR} + \text{SCR} + \text{CECR} / 12$$

(h) In the formula in paragraph (f) of this section, the abbreviations used have the following meanings:

- (1) FTCR = the number of credit hours carried by full-time Indian students (students carrying 12 or more credit hours at the end of the third week of each academic term); and
- (2) PTCR = the number of credit hours carried by part-time Indian students (students carrying fewer than 12 credit hours at the end of the third week of each academic term).
- (3) SCR = in a fall term, the number of credit hours earned during the preceding summer term.
- (4) CECR = the number of credit hours being earned in an eligible continuing education program at the conclusion of the third week of the academic term, in accordance with subsection (e) of this section.

(i) Include a count of all registered students, including distance education students, at the conclusion of the third week of the academic term.

§ 41.7 What happens if false information is submitted?

Persons submitting or causing to be submitted any false information in connection with any application, report, or other document under this part may be subject to criminal prosecution under provisions such as sections 371 or 1001 of Title 18, U.S. Code.

Subpart B – Tribally Controlled Colleges and Universities

§ 41.9 What is the purpose of this subpart?

This subpart prescribes procedures for providing financial and technical assistance under the Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended (25 U.S.C. 1801 *et seq.*) for the operation and improvement of tribal colleges and universities and advancement of educational opportunities for Indian Students. This subpart does not apply to Diné College.

§ 41.11 Who is eligible for financial assistance under this subpart?

A tribal college or university is eligible for financial assistance under this subpart only if:

(a) It is governed by a board of directors or board of trustees, a majority of whom are Indians;

(b) It demonstrates adherence to stated goals, a philosophy, or a plan of operation directed to meet the needs of Indians;

(c) It has a student body that is more than 50 percent Indian (unless it has been in operation for less than one year);

(d) Either is accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education to be a reliable authority with regard to the quality of

training offered, or, according to such agency or association, are making reasonable progress toward accreditation;

(e) It has received a positive determination after completion of an eligibility study; and

(f) It complies with the requirements of §41.19.

(g) Priority to schools and the number of grants: priority in grants shall be given to institutions which were in operation on the date of enactment of this Act [enacted Oct. 17, 1978] and which have a history of service to Indian people.

§ 41.13 For what activities can financial assistance to tribal colleges and universities be used?

Financial assistance under this subpart may be used to defray, at the determination of the tribal college or university, expenditures for academic, educational, and administrative purposes and for the operation and maintenance of the college or university.

§ 41.15 What activities are prohibited?

Tribal colleges and universities shall not use financial assistance awarded under this subpart in connection with religious worship or sectarian instruction. However, nothing in this subpart shall be construed as barring instruction or practice in comparative religions or cultures or in languages of American Indian tribes.

§ 41.17 What is the role of the Secretary of Education?

(a) The Secretary is authorized to enter into an agreement with the Secretary of Education to obtain assistance to:

(1) Develop plans, procedures, and criteria for eligibility studies required under this subpart; and

(2) Conduct such studies.

(b) BIE must consult with the Secretary of Education to determine the reasonable number of students required to support a tribal college or university.

§ 41.19 How can a tribal college or university establish eligibility to receive a grant?

(a) Before a tribal college or university can apply for an initial grant under this part, the governing body of one or more Indian tribes must request on its behalf a determination of eligibility.

(b) Within 30 days of receiving a resolution or other duly authorized request from the governing body of one or more Indian tribes, BIE shall initiate an eligibility study to determine whether there is justification for a tribal college or university.

(c) The eligibility study will analyze the following factors:

(1) Financial feasibility based upon reasonable potential enrollment; considering:

(i) Tribal, linguistics, or cultural differences;

(ii) Isolation;

(iii) Presence of alternate educational sources;

(iv) Proposed curriculum;

(2) Levels of tribal matriculation in and graduation from postsecondary educational institutions; and

(3) The benefits of continued and expanded educational opportunities for Indian students.

(d) Based upon results of the study, the Director will send the tribe a written determination of eligibility.

(e) The Secretary and the BIE, to the extent practicable, will consult with national Indian organizations and with tribal governments chartering the institutions being considered.

§ 41.21 How can a tribe appeal the results of an eligibility study?

If a tribe receives a negative determination under § 41.19(e), it may submit an appeal to the Assistant Secretary within 45 days.

(a) Following the timely filing of a tribe's notice of appeal, the tribal college or university and the tribe have a right to a formal review of the eligibility study, including a hearing upon reasonable notice within 60 days. At the hearing, the tribal college or university and the appealing tribe may present additional evidence or arguments to justify eligibility.

(b) Within 45 days of the hearing, the Assistant Secretary will issue a written ruling confirming, modifying, or reversing the original determination. The ruling will be final and BIE will mail or deliver it within one week of its issuance.

(c) If the Assistant Secretary does not reverse the original negative determination, the ruling will specify the grounds for our decision and state the manner in which the determination relates to each of the factors in § 41.11.

§ 41.23 Can a tribal college or university request a second eligibility study?

If a tribe is not successful in its appeal under § 41.21, it can request another eligibility study 12 months or more after the date of the negative determination.

§ 41.25 How does a tribal college or university apply for a grant?

(a) If the college or university receives a positive determination of the eligibility study under § 41.19, it is entitled to apply for financial assistance under this subpart.

(b) To be considered for assistance, a tribal college or university must submit an application by or before June 1st of the year preceding the academic year for which the tribal college or university is requesting assistance. The application must contain the following:

Required information	Required details
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Required information	Required details
(1) Identifying information	<p>(i) Name and address of the tribal college or university.</p> <p>(ii) Names of the governing board members, and the number of its members who are Indian.</p> <p>(iii) Name and address of the tribe or tribes that control or have sanctioned or chartered the tribal college or university.</p>
(2) Eligibility verification	The date on which an eligibility determination was received
(3) Curriculum materials	<p>(i) A statement of goals, philosophy, or plan of operation demonstrating how the education program is designed to meet the needs of Indians.</p> <p>(ii) A curriculum, which may be in the form of a college catalog or similar publication, or information located on the tribal college or university website.</p>
(4) Financial information	<p>(i) A proposed budget showing total expected education program operating expenses and expected revenues from all sources for the academic year to which the information applies.</p> <p>(ii) A description of record-keeping procedures used to track fund expenditures and to audit and monitor funded programs.</p>
(5) Enrollment information	<p>(i) If the tribal college or university has been in operation for more than one year, a statement of the total number of ISC (FTE Indian students) and the total number of all FTE students. Grantees may exclude high school students for the purpose of calculating the total number of FTE students.</p> <p>(ii) If the tribal college or university has not yet begun operations, or has been in operation for less than one year, a statement of expected enrollment, including the total number of FTE students and the ISC (FTE Indian students) and may also require verification of the number of registered students after operations have started.</p>
(6) Assurances and requests	<p>(i) Assurance that the tribal college or university will not deny admission to any Indian student because that student is, or is not, a member of a specific tribe.</p> <p>(ii) Assurance that the tribal college or university will comply with the requirements in §41.39 of this subpart.</p> <p>(iii) A request and justification for a specific waiver of any requirement of 25 CFR part 276 which a tribal college or university believe to be inappropriate.</p>
(7) Certification	Certification by the chief executive that the information on the application is complete and correct.

(c) Material submitted in a tribal college's or university's initial successful grant application shall be retained by the BIE. A tribal college or university submitting a subsequent

application for a grant, shall either confirm the information previously submitted remains accurate or submit updated information, as necessary.

§ 41.27 When can the tribal college or university expect a decision on its application?

Within 45 days of receiving an application, the Director will notify the tribal college or university in writing whether or not the application has been approved.

(a) If the Director approves the application, written notice will explain when the BIE will send the tribal college or university a grant agreement under § 41.19.

(b) If the Director disapproves the application, written notice will include:

(1) The reasons for disapproval; and

(2) A statement advising the tribal college or university of the right to amend or supplement the tribal college's or university's application within 45 days.

(c) The tribal college or university may appeal a disapproval or a failure to act within 45 days of receipt following the procedures in § 41.21.

§ 41.29 How will a grant be awarded?

If the Director approves the tribal college's or university's application, the BIE will send the tribal college or university a grant agreement that incorporates the tribal college's or university's application and the provisions required by § 41.25. The tribal college or university grant will be for the fiscal year starting after the approval date of the application.

(a) The BIE will generally calculate the amount of the tribal college or university grant using the following procedure:

(1) Begin with a base amount of \$8,000 (adjusted annually for inflation);

(2) Multiply the base amount by the number of FTE Indian students in attendance during each academic term; and

(3) Divide the resulting sum by the number of academic terms in the academic year.

(b) All grants under this section are subject to availability of appropriations.

(c) If there are insufficient funds to pay the amount calculated under paragraph (a) of this section, BIE will reduce the grant amount awarded to each eligible tribal college or university on a pro rata basis.

§ 41.31 When will the tribal college or university receive funding?

(a) BIE will authorize payments equal to 95 percent of funds available for allotment by either July 1 or within 14 days after appropriations become available, with the remainder of the payment made no later than September 30.

(b) BIE will not commingle funds appropriated for grants under this subpart with other funds expended by the BIE.

§ 41.33 What if there isn't enough money to pay the full grant amount?

This section applies if BIE has to reduce payments under § 41.29(c).

(a) If additional funds have not been appropriated to pay the full amount of grants under this part on or before June 1st of the year, the BIE will notify all grant recipients in writing. The tribal college or university must submit a written report to the BIE on or before July 1st explaining how much of the grant money remains unspent.

(b) After receiving the tribal college's or university's report under paragraph (a) of this section, BIE will:

(1) Reallocate the unspent funds using the formula in § 41.29 in proportion to the amount of assistance to which each grant recipient is entitled but has not received;

(2) Ensure that no tribal college or university will receive more than the total annual cost of its education programs;

(3) Collect unspent funds as necessary for redistribution to other grantees under this section; and

(4) Make reallocation payments on or before August 1st of the academic year.

§ 41.35 What will happen if the tribal college or university doesn't receive its appropriate share?

(a) If the BIE determines the tribal college or university has received financial assistance to which the tribal college or university was not entitled, BIE will:

(1) Promptly notify the tribal college or university; and

(2) Reduce the amount of the tribal college's or university's payments under this subpart to compensate for any overpayments or otherwise attempt to recover the overpayments.

(b) If a tribal college or university has received less financial assistance than the amount to which the tribal college or university was entitled, the tribal college or university should promptly notify the BIE. If the BIE confirms the miscalculation, BIE will adjust the amount of the tribal college's or university's payments for the same or subsequent academic years to compensate for the underpayments. This adjustment will come from the Department's general funds and not from future appropriated funds.

§ 41.37 Is the tribal college or university eligible for other grants?

Yes. Eligibility for grants under this subpart does not bar a tribal college or university from receiving financial assistance under any other federal program.

§ 41.39 What reports does the tribal college or university need to provide?

(a) The tribal college or university must provide the BIE, on or before December 1 of each year a report that includes:

(1) An accounting of the amounts and purposes for which the tribal college or university spent assistance received under this part during the preceding academic year;

(2) An accounting of the annual cost of the tribal college's or university's education programs from all sources for the academic year; and

(3) A final performance report based upon the criteria the tribal college's or university's goals, philosophy, or plan of operation.

(b) The tribal college or university must report to the BIE their FTE Indian student enrollment for each academic term of the academic year within three (3) weeks of the date the tribal college or university makes the FTE calculation.

§ 41.41 Can the tribal college or university receive technical assistance?

(a) If a tribal college or university sends the BIE a written request for technical assistance, BIE will respond within 30 days.

(b) The BIE will provide technical assistance either directly or through annual contract to a national Indian organization that the tribal college or university designates.

(c) Technical assistance may include consulting services for developing programs, plans, and eligibility studies and accounting, and other services or technical advice.

§ 41.43 How must the tribal college or university administer its grant?

In administering any grant provided under this subpart, a tribal college or university must:

(a) Provide services or assistance under this subpart in a fair and uniform manner;

(b) Not deny admission to any Indian student because they either are, or are not, a member of a specific Indian tribe; and

(c) Comply with part 276 of this title, unless the BIE expressly waives specific inappropriate provisions of part 276 in response to a tribal college or university request and justification for a waiver.

§ 41.45 How does the tribal college or university apply for programming grants?

(a) Tribes and Tribal entities may submit a written request to the BIE for a grant to conduct planning activities for the purpose of developing proposals for the establishment of tribally controlled colleges and universities, or to determine the need and potential for the establishment of such colleges and universities. BIE will provide written notice to the tribal college or university of its determination on the grant request within 30 days.

(b) Subject to the availability of appropriations, BIE may provide such grants to up to five tribes and tribal entities in the amount of \$15,000 each.

§ 41.47 Are tribal colleges or universities eligible for endowments?

Yes. Tribal colleges and universities are eligible for endowments upon a signed agreement between the tribal college and university and the Secretary as described in 25 USC § 1832. Endowments must be invested in a trust fund and the tribal college or university may only use the interest deposited for the purpose of defraying expenses associated with the operation of the tribal college or university (25 USC 1833).

Subpart C—Diné College

§ 41.49 What is the purpose of this subpart?

The purpose of this subpart is to assist the Navajo Nation in providing education to the members of the tribe and other qualified applicants through a community college, established by that tribe, known as Diné College. To that end, the regulations in this subpart prescribe

procedures for providing financial and technical assistance for Diné College under the Diné College Act, as amended (25 U.S.C. 640a–c)

§ 41.51 What is the scope of this subpart?

The regulations in this subpart are applicable to the provision of financial assistance to Diné College pursuant to the Diné College Act of December 15, 1971 (Pub. L. 92–189, 85 Stat. 646, 25 U.S.C. 640a–c) as amended by the Diné College Assistance Act of 1978, title II of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (Pub. L. 95–471, 92 Stat. 1325, 1329, 25 U.S.C. 640c).

§ 41.53 How does Diné College request financial assistance?

To request tribal college or university financial assistance, Diné College must submit an application. The application must be certified by the tribal college or university chief executive officer and include:

(a) A statement of Indian student enrollment and total FTE enrollment for the preceding academic year;

(b) A curriculum description, which may be in the form of a college catalog or like publication or information located on the tribal college or university website; and

(c) A proposed budget showing total expected operating expenses of educational programs and expected revenue from all sources for the grant year.

§ 41.55 How are grant funds processed?

(a) BIE will identify the budget request for Diné College separately in its annual budget justification.

(b) BIE will not commingle funds appropriated for grants under this subpart with appropriations that are historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

§ 41.57 When will the application be reviewed?

Within 45 days of receiving the application the BIE will send a grant agreement for signature by the Diné College president or his or her designee in an amount determined under § 41.29(a). The grant agreement shall incorporate the grant application and include the provisions required by § 41.25

§ 41.59 When will grant funds be paid?

(a) Initial grant funds will be paid in an advance installment of not less than 40 percent of the funds available for allotment by October 1st.

(b) The remainder of the grant funds will be paid by July 1st after the BIE adjusts the amount to reflect any overpayments or underpayments made in the first disbursement.

§ 41.61 Is Diné College eligible to receive other grants?

Yes. Eligibility for grants under this subpart does not bar Diné College from receiving financial assistance under any other Federal program.

§ 41.63 How can financial assistance be used?

(a) The tribal college or university must use financial assistance under this subpart only for operation and maintenance, including education programs, annual capital expenditures, major capital improvements, mandatory payments, supplemental student services, and improvement and expansion, as described in 25 U.S.C. 640c-1(b)(1);

(b) Must not use financial assistance under this subpart for religious worship or sectarian instruction. However, this subpart does not prohibit instruction about religions, cultures or Indian tribal languages.

§ 41.65 What reports must be provided?

(a) Diné College must submit on or before December 1st of each year a report that includes:

(1) An accounting of the amounts and purposes for which Diné College spent the financial assistance during the preceding academic year;

(2) The annual cost of Diné College education programs from all sources for the academic year; and

(3) A final report of Diné College's performance based upon the criteria in its stated goals, philosophy, or plan of operation.

(b) Diné College must report its FTE Indian student enrollment for each academic term within six weeks of the date it makes the FTE calculation.

§ 41.67 Can Diné College receive technical assistance?

Technical assistance will be provided to Diné College as noted in § 41.41.

§ 41.69 How shall Diné College administer its grant?

In administering any grant provided under this subpart, Diné College must:

(a) Provide all services or assistance under this subpart in a fair and uniform manner;

(b) Not deny admission to any Indian student because the student is, or is not, a member of a specific Indian tribe;

(c) Comply with part 276 of this title, unless the BIE expressly waives specific inappropriate provisions of part 276 in response to Diné College's request and its justification for a waiver.

§ 41.71 Can Diné College appeal an adverse decision under a grant agreement by the Director?

Diné College has the right to appeal to the Assistant Secretary by filing a written notice of appeal within 45 days of the adverse decision. Within 45 days after receiving notice of appeal, the Assistant Secretary shall conduct a formal hearing at which time the Diné College may present evidence and argument to support its appeal. Within 45 days of the hearing, the Assistant Secretary shall issue a written ruling on the appeal confirming, modifying or reversing the decision of the Director. If the ruling does not reverse the adverse decision, the Assistant Secretary shall state in detail the basis of his/her ruling. The ruling of the Assistant Secretary on an appeal shall be final for the Department.

Dated: August 7, 2015

Kevin K. Washburn,
Assistant Secretary – Indian Affairs

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